

Daniel D. Doyle (DD 2500)
Nicholas A. Franke (NF 6764)
David M. Brown (DB 2065)
SPENCER FANE BRITT & BROWNE, LLP
1 North Brentwood Boulevard, Tenth Floor
St. Louis, MO 63105
(314) 863-7733 – telephone
(314) 862-4656 – facsimile

J. Brian McTigue (*pro hac* pending)
Cornish F. Hitchcock (*pro hac* pending)
MCTIGUE LAW FIRM
5301 Wisconsin Ave. N.W., Suite 350
Washington, DC 20015
(202) 364-6900 - telephone
(202) 364-9960 - fax

COUNSEL FOR MICHAEL BEARD, RUSSELL DETWILER, FLOYD JONES AND JOHN
M. MCGRATH, as retirees not covered by the collective bargaining agreement.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----	x	
	:	
In re	:	Chapter 11
	:	
DELPHI CORPORATION <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	x	

**AMENDED NOTICE OF WITHDRAWAL OF MOTION TO VACATE OR AMEND
ORDER (I) APPOINTING UNIONS AS AUTHORIZED REPRESENTATIVES FOR
UNION-REPRESENTED RETIREES UNDER 11 U.S.C. §§ 1114(C) OR 1114(D) OR, IN
THE ALTERNATIVE, (II) ESTABLISHING PROCEDURES FOR SOLICITATION,
NOMINATION, AND APPOINTMENT OF COMMITTEE OF RETIRED EMPLOYEES
(THE RETIREE COMMITTEE ORDER)**

Michael Beard, Russell Detwiler, Floyd Jones, and John M. McGrath (“Movants”), non-
hourly retirees of Delphi Corporation or one of its subsidiaries or affiliates that have filed for relief
in these Chapter 11 proceedings (the “Debtors”), through their attorneys, Spencer Fane Britt &

Browne LLP and McTigue Law Firm, file their notice of withdrawal of their motion to vacate or amend the Retiree Committee Order, stating:

1. Movants filed their Motion out of concern that:

(A) The Retiree Committee Order would permit a Retirees Committee under 11 U.S.C. § 1114(d) exclusively composed of retirees covered by collective bargaining agreements, effectively disenfranchising non-hourly retirees if the Debtors later seeks to modify non-hourly retiree benefits;

(B) The Debtors' motion seeking the Retiree Committee Order stated the Debtors could unilaterally modify non-hourly retiree benefits under pre-petition reservations of rights and without compliance with Section 1114, despite a split in case law¹ and the legislative intent subsequently expressed in 11 U.S.C. § 1114(l) (2005); and

(C) That the Debtors might attempt to unilaterally modify salaried retirees' benefits without seeking court approval or providing for a potential second committee, made up of salaried retirees, to oppose the Debtors' unilateral modification or elimination of benefits.

2. Since the filing of the Motion, no International Union has opted out of serving as the authorized representative for their retirees. As a result, no retirees committee under 11 U.S.C. § 1114(c) would be established at present.

3. The Debtors subsequently filed an objection to the Motion that stated: "If and when the Debtors seek Bankruptcy Court approval to eliminate or modify the retiree medical and life insurance benefits of their non-union retired employees, the Debtors will provide Movants notice of those proceedings." Debtors' Objection ¶ 7.

¹ Compare *In re Farmland Industries, Inc.*, 294 B.R. 903 (Bankr. W.D. Mo. 2003) (plain language of § 1114 prohibits debtor's actions to modify retiree benefits pursuant to contract rights) with *In re Doskocil Cos. Inc.*, 130 B.R. 870, 876 (Bankr. D. Kan. 1991) (debtors may modify retiree benefits post-petition without court approval under rights reserved in benefit plans).

4. In reliance on this record and the statement of the Debtors, Movants withdraw their Motion seeking to vacate or amend the Retiree Committee Order, while preserving all rights to file a similar motion in future circumstances.

DATED: November 28, 2005.

SPENCER FANE BRITT & BROWNE LLP

By /s/ Daniel D. Doyle
Daniel D. Doyle (pro hac pending)
Nicholas Franke (pro hac pending)
David M. Brown (pro hac pending)
1 North Brentwood Boulevard, Tenth Floor
St. Louis, MO 63105
(314) 863-7733 – telephone
(314) 862-4656 – facsimile

ddoyle@spencerfane.com
nfranke@spencerfane.com
dbrown@spencerfane.com

and

MCTIGUE LAW FIRM

By /s/ Cornish F. Hitchcock
J. Brian McTigue (pro hac pending)
Cornish F. Hitchcock (pro hac pending)
McTigue Law Firm
5301 Wisconsin Ave. N.W., Suite 350
Washington, DC 20015
mctigue@mctiguelaw.com
(202) 364-6900 - telephone
(202) 364-9960 - fax

bmctigue@mctiguelaw.com
conh@mctiguelaw.com

ATTORNEYS FOR MOVANTS